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Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP:1 - PLR-121146-98
Date:
January 27, 1999

Re:

Taxpayer =

F =

State X =

State Y =

Date 1 =

Date 2 =

Date 3 =

Dear

We respond to your letter dated November 10, 1998, in which you requested rulings as to the federal income tax consequences of a proposed transaction. Additional information was provided in a letter dated January 5, 1999. Specifically, you requested rulings under sections 336 and 337 of the Internal Revenue Code. The facts as submitted, are as follows.

Taxpayer, is a State X for-profit corporation. Taxpayer employs the cash method of accounting for both tax and financial reporting purposes. Taxpayer was incorporated on Date 1, as a family investment company.

Taxpayer has continued as an investment company and today holds cash and a

diversified portfolio of highly appreciated marketable securities. At no time has Taxpayer made an S corporation election.

F is a State Y not-for-profit corporation. F has qualified as a section 501(c)(3) tax-exempt organization for income tax purposes pursuant to an Internal Revenue Service determination letter dated Date 2. All the outstanding shares of Taxpayer have been owned by F since Date 3. The Taxpayer shares now constitute almost all of the assets of F. Since F became the sole shareholder of Taxpayer, annual dividends paid by Taxpayer to F have approximated or exceeded the current taxable income of Taxpayer.

The parties propose the following steps (the "Proposed Transaction"):

(1) Prior to January 29, 1999, Taxpayer will amend its Certificate of Incorporation under the applicable section of the corporation law of State X to limit the permissible activities of Taxpayer to those appropriate for a section 501(c)(2) organization.

(2) Taxpayer will file Form 1024, Application for Recognition of Exemption under section 501(a) in which it will request recognition of exemption under section 501(c)(2).

Taxpayer represents that it has no current plan or intention to sell or otherwise dispose of any of its assets after the Proposed Transaction, except to the extent, if any, as may be required in order to provide funds to F to enable it to comply with the private foundation minimum distribution requirements of section 4942 of the Code. Under State Y Not-For-Profit Corporation Law, the trustees of F have a fiduciary duty to invest and manage investments "with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions." If in the future, the trustees of F determine that Taxpayer's portfolio of securities should be adjusted as a matter of prudence or in order to better meet F's charitable objectives, the trustee may cause Taxpayer to buy, sell, or otherwise dispose of securities in accordance with their fiduciary duty.

Based solely on the information submitted, we rule as follows:

Provided the Proposed Transaction is completed before January 29, 1999, the Proposed Transaction will not result in the recognition of gain or loss under § 336 or § 337.

We express no opinion about the tax treatment of the proposed transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction

that is not specifically covered by the above rulings. In particular, we express no opinion on whether Taxpayer will be a tax-exempt organization under § 501(c)(2) after the Proposed Transaction.

The ruling in this letter is based on the facts and representations submitted under penalties of perjury in support of the request for a ruling. Verification of that information may be required as part of the audit process.

This ruling letter is addressed only to the taxpayer who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter should be attached to your federal income tax return for the taxable year in which the Proposed Transaction occurs.

In accordance with the Powers of Attorney currently on file with this office, copies of this ruling are being sent to your authorized representatives.

Sincerely Yours,
Assistant Chief Counsel (Corporate)

BY: _____
Mark S. Jennings
Senior Technician Reviewer, Branch 1

cc: